

Message Text

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SUBJECT: DISTRIBUTION OF ESTATES OF MISSING PERSONS -
INTERPRETATION OF ETHIOPIAN LAW

REF: STATE 49074

1. ATTEMPTS TO ANSWER QUESTIONS POSED IN REFTTEL RE COURTS OF JURISDICTION AS RELATED TO PRINCIPAL RESIDENCE OF ABSENTEES HAVE MERELY RAISED MORE QUESTIONS. EMB LEGAL ADVISOR RESEARCHED "PRINCIPAL RESIDENCE" AND FOUND UNDER ARTICLE 175, (1) "THE MERE FACT THAT A PERSON IS FOR A TIME IN A CERTAIN PLACE SHALL NOT BE SUFFICIENT TO CONSTITUTE FOR HIM A RESIDENCE IN SUCH PLACE", HOWEVER, PARA (2) STATE, "NOTWITHSTANDING THE PROVISIONS OF SUB-ART. (1), A RESIDENCE IS ACQUIRED WHENEVER THE SOJOURN IS TO LAST, OR HAS LASTED, IN FACT, MORE THAN THREE MONTHS." LEGAL ADVISOR IS OF OPINION THAT LAST POINT COULD BECOME STICKY IN HAMMATT/ANTLES CASE AS THEIR INTENTIONS REMAINING IN ETHIOPIA WOULD HAVE TO BE DETERMINED, IF POSSIBLE. TO BEST OF OUR KNOWLEDGE, THEY ARRIVED HERE SOMETIME IN NOV, 1974 AND BY THE TIME OF THEIR DISAPPEARANCE ALREADY HAD BEEN HERE ALMOST TWO MONTHS. ART. 176 DEFINES "PERSONS WITHOUT PROVED RESIDENCE THE PLACE WHERE A PERSON IS SHALL BE DEEMED TO BE HIS RESIDENCE, UNLESS IT IS PROVED THAT SUCH PERSON HAS HIS RESIDENCE IN ANOTHER PLACE." FINALLY, ART. 177 GOES INTO "SEVERAL RESIDENCES: (1) A PERSON MAY HAVE SEVERAL RESIDENCES (2) ONE OF SUCH RESIDENCES MAY HAVE THE CHARACTER OF PRINCIPAL RESIDENCE AND THE OTHER RESIDENCES THAT OF SECONDARY RESIDENCES."

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2. THE COURT OF JURISDICTION IS DEFINED UNDER ART. 112, (1)

"THE COURT HAVING JURISDICTION SHALL BE THAT OF THE PLACE WHERE THE PERSONS WHOSE DEATH THE PERSON MAKING THE APPLICATION WANTS TO ESTABLISH AND HIS PRINCIPAL RESIDENCE AT THE TIME OF HIS DEATH. (2) THE COURT MAY WAIVE ITS JURISDICTION IN FAVOUR OF THE COURT OF THE PLACE WHERE THE EVENT WHICH BROUGHT ABOUT THE DEATH HAS OCCURRED OR IN FAVOUR OF THE COURT OF ANOTHER PLACE. (3) THE DELEGATION OF JURISDICTION THUS MADE IS BINDING ON THE COURT IN WHOSE FAVOUR IT IS MADE."

3. PUTTING THIS ALL TOGETHER, WE ARE OF THE OPINION THAT:

A. COMING AS IT DOES AFTER THE ARTICLE WHICH DEFINES "JUDGMENT DECLARING DEATH", ART. 112 INDICATES THAT THE ABSENTEES PRINCIPAL RESIDENCE AND THE COURT HAVING JURISDICTION OVER THEIR DISAPPEARANCE ARE ISSUES WHICH ARE DECIDED AT THE TIME APPLICATION IS MADE TO THE COURT FOR AN ABSENCE/DEATH JUDGMENT, E.E. AFTER THE TWO YEAR WAITING PERIOD. THE LAW DOES NOT APPEAR TO GIVE US AUTHORITY TO MAKE A DETERMINATION AS TO WHERE PRINCIPAL RESIDENCE WAS OR WHICH COURT SHALL HAVE JURISDICTION. LEGAL ADV ALSO RAISED THE POINT OF A POSSIBLE CONFLICT OF LAW, SUCCESSIONS AND ADMINISTRATION OF ESTATES. HE REFERRED TO A WORK BY A LAW FACULTY PROFESSOR AT THE UNIVERSITY HERE WHICH GOES INTO THE QUESTION OF "WHETHER ETHIOPIA WILL LOOK TO THE LAW OF THE STATE OF NATIONALITY OR THE STATE OF DOMICILE AS THE GOVERNING PERSONAL LAW".

B. THE LEGAL COMPLEXITIES HAVE GONE BEYOND THE EMBASSY'S ABILITY TO PROVIDE THE TYPE OF INTERPRETATIONS WHICH APPEAR TO BE CALLED FOR IN THIS CASE. LEGAL ADV, WHILE A LAW SCHOOL GRADUATE, HAS NOT TAKEN BAR EXAM AND IS NOT PRACTICING ATTORNEY. HE IS UNDERSTANDABLY RELUCTANT TO GIVE UNQUALIFIED INTERPRETATIONS OF AREAS WHICH ARE NOT HIS SPECIALITY, NOR ARE CONSOFFS QUALIFIED TO GIVE COMPLICATED OPINIONS OR ACCORDING TO THE REGS ALLOWED TO "TAKE STEPS WHICH AMOUNT TO SERVING AS ATTORNEY". WE BELIEVE WE HAVE DONE THE BEST WE COULD UNDER SOMETIMES SEVERE HANDICAPS OF INCOMPLETE AND MISLEADING INFORMATION BUT THAT THE MATTER NOW PROPERLY BELONGS WITH AN ATTORNEY LICENSED TO PRACTICE HERE WHO CAN ACT IN THE FAMILIES' BEHALF REGARDING THE WHOLE MATTER OR INTERPRETATIONS, COURT JUDGMENTS AND OTHER LEGAL REQUIREMENTS. IN THIS REGARD, SEVERAL WEEKS AGO, WE CONTACTED UNCLASSIFIED

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THE OFFICE OF ROBERT SCOTT, THE ATTORNEY ORIGINALLY HIRED BY THE HAMMATT FAMILY. WE WERE TOLD THAT SCOTT WAS NOT RETURNING TO ETHIOPIA, THE OFFICE WAS BEING CLOSED AND HIS ASSISTANT WHO HAD WORKED ON THIS CASE, HAD ALREADY FOUND EMPLOYMENT ELSEWHERE. WE DO NOT KNOW WHETHER THE FAMILIES ARE AWARE OF THE ABOVE BUT WE ARE SENDING A COPY OF OUR NEWLY REVISED ATTORNEY'S LIST TO DORFMAN IN WISCONSIN WITH THE SUGGESTION THAT THE FAMILIES HIRE THE SERVICES OF ANOTHER ATTORNEY HERE. WE WOULD, OF COURSE,

WORK WITH SUCH A REPRESENTATIVE TO EVERY EXTENT POSSIBLE,
PARTICULARLY WITH REGARD TO WHEN AND IN WHAT MANNER THE MEN'S
PERSONAL EFFECTS CAN BE DISTRIBUTED TO HEIRS.
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